

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

In the matter of an appeal under Article 138,
154 of the Constitution read with provisions
of Provincial High Court (special provision)
Act No. 19 of 1990

C.A. Case No: **CA/PHC/234/2015**

H.C.R/ RA/5/11

MC Rathnapura Case No:

23527(66)

1. W.M.S.D. Wanasundera
2. Lal Wasantha Abeywickrama

both of

No. 132/15, Moragahalanda Mawatha,
Pannipitiya.

Complainant-Petitioner-Appellants

:-Vs-

K.A. Karunaratne,
No. 37, Collin Crescent,
Muwagama, Getangama,
Ratnapura.

Respondent-Respondent-Respondent

Before : **A.L. Shiran Gooneratne J.**

&

Mahinda Samayawardhena J.

Counsel : R.M.D. Bandara with Lilanthi De Silva for the
Appellants

Nivantha Satharasinghe for the Respondent

Written Submissions: By the Appellants and the Respondent on 29/03/2019

Argued on : 14/05/2019

Judgment on : **24/06/2019**

A.L. Shiran Gooneratne J.

The Petitioner-Petitioner-Appellant (hereinafter referred to as the Appellant) has invoked the jurisdiction of this Court to have the judgments of the High Court and the Magistrate's Court dated 10/12/2015 and 03/01/2011, respectively, to be set aside, *inter alia*, on the basis that the Court has disregarded the fact that the Respondent has not been in possession of the disputed land, 2 months prior to the said dispossession.

The Appellant contends that the learned Magistrate came to an erroneous conclusion by stating that the Appellant has failed to give an exact date of

dispossession, which is a requirement in terms of Section 68(3) of the Primary Courts Procedure Act (Act).

In *Mohamed Shareef Nazar v. Asoka Jayalal Karunanayake, (CA/74/07 Revision)*, the Court held that,

“In this respect, it appears that the learned Magistrate has misdirected himself that it is imperative to reveal the exact date of dispossession. Having considered the contention of both counsel, I am of the view that to construe Section 68(3) as requiring the revelation of the exact date of dispossession leads to absurdity and would render the scheme in part VII of the PCPA hopelessly meaningless. On a perusal of the documents and the affidavits, it appears that the Petitioner has revealed the date of dispossession with reasonable precision and is entitled to be considered for restoration of possession under Section 68(3).”

The Appellant contends that having decided that the learned Magistrate was misdirected in law when making the said order, the decision of the learned High Court Judge to have decided the case under Section 68(1) of the said act is erroneous.

In *Punchi Nona v. Padumasena and others (1994) 2 SLR 117 at page 121*, this Court held that,

“Section 68(1) of the Act is concerned with the determination as to who was in possession of the land on the date of the filing of the information to Court. Section 68(3) becomes applicable only if the judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 2 months next preceding the date on which the information was filed.”

Under Section 68 of the Act “---it shall be the duty of the judge of the Primary Court holding the inquiry to determine as to who was in possession of the land or the part on the date of the filling of the information under Section 66 and make order as to who is entitled to possession of such land or part thereof.”

The Respondent contends that the land in dispute called “Hiriliyaddage Kekunagaha” is a portion of Anaankaragalahena which is a state land, in possession of his father for well over 40 years and continued to be in possession of the said land where coconut plants and other crops were grown, identified as the part marked “X” in the sketch produced by the police officer at the inquiry. The said contention of the Respondent has been substantiated by affidavits and the police inquiry report produced before the learned Magistrate.

According to the affidavits submitted by Daslin Wijesekara Niriella, marked V4 and document marked V6, long term possession by the Respondent to the land in dispute is clearly established. It is observed that the Appellants have

not challenged the said evidence before the police officer inquiring into the dispute.

In terms of Section 68(1) of the Act, *the learned Magistrate is obliged first to determine as to who was in possession of the land or the part on the date of filing of the information under Section 66. According to the facts in evidence, there is no doubt that it was the Respondent who was in long term possession of the disputed land and at the date of filing of the information.*

In *Punchi Nona vs. Padumasena and others (1994) 2 SLR 117*, Court held that, *Section 68(1) of the Act is concerned with the determination as to who was in possession of the land on the date of filing of the information in Court and that Section 68(3) becomes applicable only if the Judge can come to a definite finding that some other party had been forcibly dispossessed within a period of 02 months next preceding the date on which such information was filed.*

Therefore, the provision in Section 68(3) of the Act has no application to the facts of the instant case.

I do not see any illegality in the order given by the learned Magistrate in deciding this case in terms of Section 68(1) of the Act to determine as to who was in possession of the land on the date of filing of the information in Court.

Accordingly, I am of the view that in terms of Section 68(1) of the said Act the Respondent has established uninterrupted and unchallenged possession to the land in question at the time of filing the information to Court.

In the circumstances, I have no reason to disagree with the said findings of the learned High Court Judge. Accordingly, the application is dismissed with costs fixed at Rs. 10,000/-.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL